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July 31, 1980

ATTORNEY GENERAL OPINION NO. 80- 173

Arthur H. Griggs  
Chief Attorney  
Department of Administration  
Second Floor, Statehouse  
Building Mail

Re: State Departments; Public Officers, Employees--Open Meetings Law--Meetings Held Pursuant to Telephone Conference Calls

Synopsis: A telephone conference call among members of a public body may constitute a meeting of such body, where the number of members engaged in such call is sufficient by statute to transact the business of the body, and so long as all members thereof are notified of the conference call and given the opportunity to participate. Meetings held pursuant to telephone conference calls are subject to the Open Meetings Act where such calls involve a majority of a quorum of the public body's membership, even though the number of members involved is not enough to transact the business of the public body. Cited herein: K.S.A. 75-4317, K.S.A. 1979 Supp. 75-4318.

\* \* \*

Dear Mr. Griggs:

You request our opinion regarding the use of telephone conference calls for meetings of state boards and commissions. You indicate that

"[t]here have been several instances where boards and commissions know that they are going to have a meeting of a very short duration and the use of telephone conference calls could substantially reduce travel and other expenses relating to such a meeting."

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Although you limit your inquiry to the question of whether telephone conference calls are sufficient to constitute legal "meetings," we note that an issue inherent within your request is whether such telephone communications are subject to the Open Meetings Act (K.S.A. 75-4317 et seq.). We will, therefore, formulate our response to address both issues. We further note that your request is phrased in a general rather than specific context, as your inquiry does not regard the propriety of telephone conference calls concerning any particular state board or commission. Accordingly, our response will be phrased in that same general context, with the caveat that specific statutory provisions applicable to particular public bodies may preclude in whole or in part the application of the general principles discussed herein to such public bodies.

With respect to the issue of whether conference telephone calls may be used to conduct meetings of public bodies, you have called our attention to a 1971 letter opinion issued by Attorney General Vern Miller to former Governor Robert Docking. In that opinion, approval was given to the use of conference telephone calls for meetings of the State Finance Council, and you have asked if that opinion may be relied upon by you in advising members of boards and commissions as to the use of telephone conference calls. In that opinion, the Attorney General concluded that the "state finance council may validly transact business by means of a telephone conference call in which a quorum of its membership participates in lieu of a meeting at which the members of the council are physically present." In the words of Attorney General Miller:

"Through a telephone conference call, to which all members of the council, or a quorum thereof, are parties, each of the members may express his views fully, immediately and directly to all other members. He may hear and consider the views of each of the others and, in turn, respond thereto. Such an arrangement permits the full interchange of ideas, information and judgments requisite to joint and considered decisions by the group. Decisions made in such are not the result of separate and independent actions taken by individual members separate and apart from one another; rather, such decisions result from the collective action of the board, or a majority thereof, whose members have 'met', albeit through simultaneous telephonic communication; discussed and considered jointly the matters noticed on the agenda as the business of that session; exchanged information, views and judgments concerning the subjects to be determined; and thereupon jointly decided the business of the council."

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The former Attorney General limited his opinion, favorable to telephone conference calls, to arrangements in which

"[m]embers would not merely telephone their separate votes to a meeting of other members physically assembled together, but which would involve the conduct of the entire meeting of the members over such telephone arrangement, whereby, as stated, all members may together, and in consultation with each and every member of the council, jointly discuss and consider the business of the council, and a majority thereof may reach a joint decision, which shall be the decision of the board upon such items of business as are determined."

He further cautioned:

"It is a prerequisite to such a telephone conference, as to a meeting whereat the members are physically assembled together, that notice be given to all members prior to the telephonic meeting, and that all members be given an opportunity to participate therein."

We concur with the foregoing principles, and while our research has not disclosed any case law bearing precisely upon this issue, it is our opinion that a conference telephone call made in accordance with these principles satisfies the prerequisites for the transaction of business by a public body. These prerequisites were recited in a recent opinion of this office (Attorney General Opinion No. 80-159), and in order to avoid unduly burdening our response to your inquiry, we are enclosing a copy of that opinion for your consideration.

Having concluded that a meeting for the transaction of a public body's business may be conducted by means of a telephone conference call, the question then arises as to whether such meetings are subject to the Open Meetings Act. The primary requirements of that Act are contained in K.S.A. 1979 Supp. 75-4318, which states, in pertinent part:

"Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot, but any administrative

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body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving such quasi-judicial functions."

Thus, the Kansas Open Meeting Act requires meetings of public bodies to be open to the public. "Meeting" is defined for the purpose of the Open Meetings Act as follows:

"As used in this act, 'meeting' means any prearranged gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this . . . [act] for the purpose of discussing the business or affairs of the body or agency." K.S.A. 75-4317a.

We note that many states statutorily require meetings held through the use of telephonic or electronic communications to be held in compliance with their open meetings acts. Ore.Rev.Stat. §192.670 (1979); Utah Code Ann. 1979 Supp. §52-4-2(1); N.J.Stat.Ann §10:4-8(b) (1976); Tenn. Code Ann. 1979 Supp. §8-4402. However, since the Kansas law contains no specific reference to the use of electronic or telephonic communications, resolution of this issue depends on the scope of the foregoing definition of "meeting," i.e., a determination of whether a telephone conference call among members of a public body constitutes a "gathering" within the contemplation of the Open Meetings Act.

In Attorney General Opinion No. 80-159 we resolved such proposition in the affirmative, concluding that the definition of "meeting" under the Act was broad enough to include a meeting held via a telephone conference call. The following statement from that opinion explains the rationale underlying that conclusion:

"In view of the purposes of the Kansas Open Meetings Act and the liberal interpretation to which it is entitled, we can find no justification for reaching a conclusion that would restrict the word 'gathering' to include only face to face contacts. Indeed, it is the discussion among members of a governing body which is the real subject of the Act and related case law. It is, likewise, the discussion of public issues that is of interest to the public in general. Since such discussion, as a matter of fact, can be held via the telephone we can only conclude that such discussion is within the ambit of the Open Meetings Act even though the words of such discussions are uttered through an electronic device." Id. at p. 5.

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We note that Attorneys General from other jurisdictions have reached similar conclusions. See, e.g., 1974 Op. Atty. Gen. No. 46 (Pa.). Of particular pertinence is an opinion of the Ohio Attorney General. The Ohio open meetings law, like that of Kansas, does not specifically speak to telephone communications; but, as noted in Open Meetings: Actions of Meetings Covered, 38-39, November, 1979, prepared by The National Association of Attorneys General, Committee on the Office of Attorney General, Ohio's

"definition of meeting has been broadly construed so as to include telephone conferences. [See Ohio Office of the Attorney General, An Analysis of R.C. 121.22 as Amended by AM.S.B. No. 74 (Nov. 20, 1975), p. 4] Ohio law defines 'meeting' as 'any prearranged discussion of public business'; since any prearranged 'discussion' qualifies as a meeting, any discussion through the use of electronic equipment falls within the definition of meeting, and telephone conferences must be held on speaker phones so that the public may listen, and notice requirements must be followed. [Id.]"  
(Footnotes omitted.)

In light of the opinions of other states' Attorneys General, we are persuaded to reaffirm our prior conclusion that the Open Meetings Act encompasses meetings of public bodies conducted by means of telephone conference calls. Of course, all of the Act's definitional elements of a meeting must be present, i.e., the meeting must be prearranged, include at least a majority of a quorum of the public body's membership and be held for the purpose of discussing the business or affairs of the public body. If all these prerequisites are not satisfied, the meeting is not one subject to the requirements of the Open Meetings Act.

So, for example, a gathering of less than a majority of a quorum does not constitute a "meeting" under the Act. Likewise, a gathering that is not prearranged or does not involve the conduct or transaction of the business of the governing body, is not a "meeting" regulated by the Act, although it should be remembered that the transaction of business or taking of binding action is not the only focal point of the Open Meetings Act; it also covers "all gatherings at all stages of the decision-making process." Coggins v. Public Employee Relations Board, 2 Kan.App.2d 416, 423 (1978). Thus, gatherings attended by members of a public body may be subject to the Act even though no "formal" meeting is held or binding action taken. Attorney General Opinion No. 80-28 at p. 2.

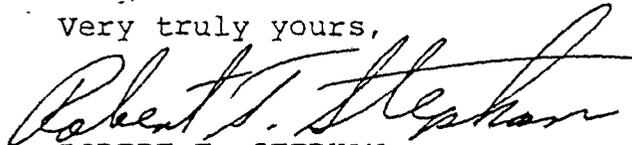
While the requirements of the Open Meetings Act are usually considered with respect to meetings in which members of a public body are physically present, such requirements are equally applicable, in our judgment, where some or all of the members of a public body are present at a

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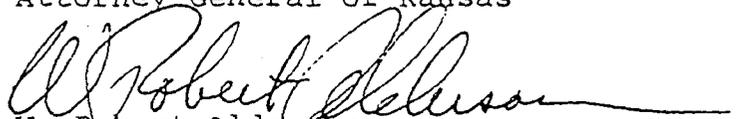
meeting by means of telephonic communication. It also is to be remembered that a prescribed quorum of a public body's membership (usually a majority thereof) must be present in order to transact the business of the body. On the other hand, only a majority of such quorum is required to constitute a meeting under the Open Meetings Act. Thus, even though the number of members present may be less than the quorum required to transact business, such gathering may be subject to all of the constraints of the Open Meetings Act if members constituting a majority of such quorum are present.

In summary, therefore, it is our opinion that a telephone conference call among members of a public body may constitute a meeting of such body, where the number of members engaged in such call is sufficient by statute to transact the business of the body, and so long as all members thereof are notified of the conference call and given the opportunity to participate. It also is our opinion that meetings held pursuant to telephone conference calls are subject to the Open Meetings Act where such calls involve a majority of a quorum of the public body's membership, even though the number of members involved is not enough to transact the business of the public body.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General

RTS:WRA:phf  
Encl.